



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/166376

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 28, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on August 06, 2015, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner was overissued BadgerCare+ benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Dean Landvatter

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner was notified that that he had been overissued BadgerCare+ benefits. The basis for this Medicaid/BadgerCare+ overissuance claim was that income was not reported as required; more specifically, Petitioner was repeatedly reported to be in the home of the mother ([REDACTED]) of his child but his income not reported.

3. Petitioner's household consists of Petitioner, the mother ( ) of his child, their child in common and 2 other children of the 's from another relationship.
4. The agency sent Petitioner a notice that he had been overissued BadgerCare+ benefits, dated April 27, 2015, that indicated that Petitioner:
 

had been overissued BadgerCare+ during the period of October 1, 2012 through September 30, 2013 in the amount of \$337.00 – this overpayment consists of premiums that would have been due for Petitioner's child had his income been reported.
5. The agency based its decision that was in the home of on the following submissions by :
  - A February 21, 2011 online renewal,
  - A second February 21, 2011 online renewal,
  - A six-month report form signed on September 19, 2011 is not clear but worker confirmed both in house from child care,
  - A February 16, 2012 online renewal,
  - An August 30, 2012 online renewal,
  - A six-month report form signed September 24, 2012,
  - A six-month report form signed February 24, 2013 and
  - An online renewal application dated August 22, 2013.
6. Petitioner's income was not an issue at the hearing nor was the calculation of the amount of the overpayment.
7. The record was held open to give an opportunity to submit evidence concerning where Petitioner was residing during the time alleged here. She submitted:
  - A lease for the above address for the period of 5/11 through 4/12, dated April 4, 2011, for the above address which indicates that Petitioner is the lessee and does not contain the name of Petitioner;
  - A 2014 Federal tax form # 1098 indicating that Petitioner had paid mortgage interest on a property in Lindenhurst, Illinois;
  - A 2012 property tax bill for the Lindenhurst, Illinois property, which indicates that Petitioner and are the taxpayers of record;
  - A 2013 property tax bill for the Lindenhurst, Illinois property which indicates that Petitioner and are the taxpayers of record;
  - A 2015 real estate tax bill which indicates that Petitioner is the sole taxpayer of record for the Lindenhurst property;
  - An August 1, 2015 utility bill for the Lindenhurst property showing that the account is in the name of Petitioner;
  - A mortgage statement from February of 2015 indicating that Petitioner is the payer of a mortgage for the Lindenhurst property;
  - An August 2015 utility bill for the above address showing that it is in the name of and

- A July 2015 utility bill for the above address showing that it is in the name of [REDACTED]

### DISCUSSION

The BadgerCare+ eligibility calculation begins with a determination of who is included in the BadgerCare+ test group. During the overpayment period involved here the test group is the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. *BadgerCare+ Eligibility Handbook, §2.2.*

Inclusion in the test group is determined by qualifying relationships and legal responsibility:

The BC+ Test Group includes the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility. Inclusion in the Test Group is determined by qualifying relationships and legal responsibility.

Anyone in the home who meets the criteria of being in the BC+ Test Group, is always included in the group whether or not s/he requested BC+.

*BadgerCare+ Eligibility Handbook, §2.2.*

The BadgerCare+ Test Group for a primary person who is residing with his or her own child must include a child under age 19 of the primary person and the co-parent of a primary person's child. *Id. §2.2.1.*

Further, gross income is counted when determining BC+ eligibility. *BEH, §16.1.* The gross income limit for an adult for BadgerCare+ was 200% of the Federal Poverty Level (FPL). *BEH, §16.1, release 07-02. Additionally, children in a group with income in excess of 200% of the FPL were required to pay a premium. BEH, §19.1, Release 12-02. During the time periods involved here 200% of the FPL was \$4501.66 and increased to \$4595 as of February 1, 2013 for a group of 5. Operations Memos, respectively, 12-05, issued 1/31/12 and effective 2/1/12 and 13-02, issued 2/4/13 and effective 2/1/13. Finally, as of July 1, 2012 parents were required to pay a premium if income exceeded 133% of the FPL. BEH, §12-02, effective 7/1/12. 133% of the FPL was \$2993.60 which increased to \$3055.66 as of February 1, 2013. See Operations Memos, respectively, 12-05, issued 1/31/12 and effective 2/1/12 and 13-02, issued 2/4/13 and effective 2/1/13.*

That income for Petitioner was not reported is not contested here; rather, Petitioner maintains that he was not living with [REDACTED] during the period involved here. The agency bases the contention that Petitioner and [REDACTED] were residing together on the 8 filings by Petitioner in which [REDACTED] reports Petitioner in the home. It does establish a prima facie case for the proposition that Petitioner and [REDACTED] were residing together.

[REDACTED] testified that Petitioner lives in Lindenhurst, Illinois but that he occasionally stays with her especially on weekends. In support of that testimony she submitted the documents noted at Finding # 6 post hearing.

I am sustaining the overpayment. [REDACTED] did report Petitioner in the home on multiple occasions. Questions on the renewal forms ask if Petitioner is a Wisconsin resident. [REDACTED] answered yes. There is also a question – does he intend to reside in Wisconsin. [REDACTED] answered yes.

The documents submitted by [REDACTED] are inconclusive. That Petitioner is not on lease does not mean that he was not there. The real estate records from Lindenhurst suggest that Petitioner owned the property there with another male with the same last name during the period involved here. Thus that individual might

well have been living at the Lindenhurst property. Utility bills are from 2015 rather than the time period of the overpayment.

The preponderance of the evidence, here the documentary record, does show that Petitioner and [REDACTED] were residing together as alleged. I am concluding that Petitioner, [REDACTED], their child in common and her 2 other children live in the same household, that all are included in the same group for purposes of determining BadgerCare+ eligibility and that the income of Petitioner as a co-parent must be counted.

The Department may recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
  2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
  3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.
- Wis. Stat. § 49.497(1).*

There is an overpayment here. [REDACTED] reported Petitioner in the home repeatedly but did not report his income. Finally, I note that liable parties for BadgerCare+ overpayments include adult group member and parents but not children. *BEH*, §28.4.4. Here Petitioner is the parent of only one of the children in the home and is not married to Petitioner so is liable only for the overpayment for his child.

### **CONCLUSIONS OF LAW**

That Petitioner was living in the home with his child and the child's mother and is liable for the overpayment of BadgerCare+ benefits paid for his child which occurred as Petitioner's income was not reported.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

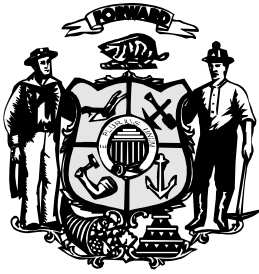
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of September, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 21, 2015.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability